IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

Bail Appl..No. 6727 of 2007()

CRIME NO. 124/07 OF AGALI POLICE STATION, PALAKKAD

PETITIONER/3RD ACCUSED

POCKER HAJI, AGED 72 YEARS,
S/O AMMAD(LATE), EROTH HOUSE,
NADAPURAM AMSOM DESOM,
VATAKARA TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.M.ASOKAN
SRI.DEVAPRASANTH.P.J.

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
SHO, AGALI POLICE STATION, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6727 of 2007

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Dated this the 6th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner is the third accused in a crime registered under Section 420 I.P.C. The crime has been registered on the basis of a private complaint filed before the learned Magistrate and referred by the learned Magistrate to the police under Section 156(3) Cr.P.C. Altogether there are three accused persons. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that totally false and vexatious allegations are raised against the petitioner, a person aged more 70 years, in an attempt to coerce the petitioner as also his son/A2 and the first accused to yield to unreasonable terms dictated by the defacto complainant. The first accused has filed a prosecution under Section 138 of the N.I. Act against the defacto complainant, wherein he has alleged that a cheque issued by the defacto complainant to the first accused

has been dishonoured and an offence under Section 138 of the N.I. Act has been committed by the defacto complainant and others. The said complaint was filed long earlier. As a retaliation against that, allegations are presently raised against accused 1 to 3.

3. The gravamen of the allegations, it would appear, is that the defacto complainant had wanted the third accused to prevail upon his son/A2 to issue a cheque in favour of the company (A1 in the 138 prosecution). The said cheque was issued by the son of the petitioner herein, i.e. A2. The arrangement was that the company would negotiate the said cheque and by the time it comes up for payment, the requisite payment shall be made and the cheque shall be honoured. As security for so handing over the cheque through the petitioner herein, a blank signed cheque of the defacto complainant was allegedly handed over to the second accused. The transaction did not go through, but the cheque issued by the defacto complainant to the second accused was not returned. That cheque was clandestinely handed over by the second accused to the first accused in pursuance of a conspiracy between accused 1 to 3 and it is thereafter that the first accused has

presented the said cheque for encashment. It is subsequently that the S.138 prosecution has been initiated.

4. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. In the dispute, if any, between his son/A2 and the defacto complainant, the petitioner has been dragged into the controversy with the sole intention of vexing and harassing him and thus ensuring that the third accused will play a role to bring out settlement of the dispute. The petitioner apprehends imminent arrest. The defacto complainant is very influential. The petitioner is likely to be threatened, vexed and harassed. It is prayed that anticipatory bail may be granted to the petitioner.

5. Notice is given to the learned Prosecutor. He does not oppose the application. In the facts and circumstances, to which I have referred to earlier, I am satisfied that directions under Section 438 Cr.P.C. can be issued. In the absence of opposition, I am satisfied that it is not necessary for me to advert to facts in any greater detail. Appropriate conditions can of course be imposed.

6. In the result:

(1) This application is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioner shall surrender before the learned Magistrate on 13.11.2007 at 11 a.m. The learned Magistrate shall release the petitioner on regular bail on condition that he executes a bond for Rs.25,000/- (Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 1 p.m. on 14.11.2007 and thereafter as and when directed by the Investigating Officer in writing to do so.

(c) If the petitioner does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 13.11.07 and the police shall be at liberty thereafter to arrest the petitioner and deal with him in accordance with law.

(d) If the petitioner were arrested prior to his surrender on 13.11.2007 as directed in clause (1) above, he shall be released on bail on his executing a bond for Rs.25,000/- without any surety undertaking to appear before the learned Magistrate on 13.11.2007.

(R. BASANT)
Judge

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